



THE COMMONWEALTH OF MASSACHUSETTS AUTO DAMAGE APPRAISER LICENSING BOARD

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DEVAL L. PATRICK
GOVERNOR

GILBERT W. COX Jr.
CHAIRMAN

CARL GARCIA
DAVID KRUPA, CPCU
JOSEPH COYNE
THOMAS MCCLEMENTS

Minutes of Meeting of the Board on May 20, 2014, Approved the Board on June 11, 2014 by a Vote of: 5-0.

May 20, 2014 Minutes of Board Meeting

**Automobile Damage Appraiser Licensing Board Meeting Held at
Division of Insurance, 1000 Washington Street, Boston, Massachusetts**

Members Present:

Gilbert Cox, Chairman
Carl Garcia
David Krupa, CPCU
Joseph Coyne

Attending to the Board:

Michael D. Powers, Counsel to the Board
Steven Zavackis for the Division of Insurance, assigned to the Office of the General Counsel,
took the minutes of the Board meeting.

Proceedings recorded by:

Jillian Zwien of the Alliance of Automotive Service Providers of Massachusetts (Audio/Video).

Review of minutes:

Review of the minutes from the meeting held on April 29, 2014, was conducted by the Board.

A motion was made by Board Member Carl Garcia, seconded by Board Member Joseph Coyne to approve the minutes of the Board Meeting held on April 29, 2014. The motion passed by a vote of: 4-0.

Report on License Examination:

Board Member Garcia reported the Part II examination is proceeding as scheduled for June 17, 2014. He was provided with an appeal of an answer to a question on the Part-II examination that was held on April 1, 2014, by an applicant. Member Garcia informed Chairman Cox that a review of the matter would be conducted and he would contact the applicant to discuss his appeal.

Discussion of Amending the ADALB's Regulation:

Item number III on the Board's agenda provided:

Further Discussion of amending the ADALB's Regulation, 212 CMR 2.00 et seq. or issuing an Advisory Ruling clarifying the term "personal inspection" contained in the regulation.

Board Member David Krupa reported that at the Board meeting that was held on April 29, 2014, Chairman Cox had assigned this matter to him and Board Member Garcia to review and draft a potential Advisory Ruling clarifying the term "personal inspection" contained in the Auto Damage Appraiser Licensing Board regulation at 212 CMR 2.04.

Mr. Krupa informed the Board that the original language was inserted into the Board's regulation in 1982, at which time the technology was different than today. Since that time, changes in photographic technology have been made and we now have video and digital imaging. Mr. Krupa and Mr. Garcia drafted an Advisory Ruling which would be consistent with this new technology.

Mr. Krupa handed out a draft of the proposed Advisory Ruling to all the Board members, which stated, "The Auto Damage Appraiser Licensing Board has passed a motion agreeing that an appraisal conducted by a licensed appraiser via review of video or digital images with documentation meets the requirements of 212 CMR 2.04(1)(d) 'The appraiser shall personally inspect the damaged motor vehicle and shall rely primarily on that personal inspection in making that appraisal....'"

Chairman Cox asked if Mr. Krupa and Mr. Garcia's drafted Advisory Ruling would address a concern that had been expressed at the previous Board Meeting by Board Member Coyne about the use of still photography.

Board Member Krupa said he believed it did, in as much as the digital imaging is taken in a series of images.

Board Member Garcia added that digital imaging makes the appraisal faster, and documenting the fact that an appraiser has digital images of the damage to the motor vehicle is important. He asserted, each individual appraiser should be able to interpret the law, and the law should be as broad as possible.

Mr. Garcia expressed his concern about the Metropolitan Property and Casualty Insurance Company's plan which allows for the use of "Skype-type" technology to conduct an appraisal and the focus on the interaction at the conference between the remote appraiser and the person who is at the site of the damaged motor vehicle. He said that the plan seems to focus on the people. He emphasized the focus must be on the damage to the motor vehicle and not the people conducting the "Skype" conference.

Chairman Cox said that the Board's regulation makes no reference as to who is taking the digital imaging. He questioned the ability of the "Skype-technology" to video the damage underneath the motor vehicle.

Mr. Garcia responded that no appraiser should write an appraisal for damage that he or she can't see and document. He expounded, when conducting an appraisal, you must have reference back to documents to support what you are writing. Mr. Garcia said that in his auto body shop they use a camera system that provides images of the entire motor vehicle including the underside.

Chairman Cox asked if the proposed language of the Advisory Ruling should have all of the sentences of 212 CMR 204(1)(d) inserted in it.

Mr. Garcia responded that the Advisory Ruling is only a short term solution between now and the time it will take to amend the regulation. At the Special Meeting, that must be held by the Board for public input before the Board's regulation is amended, someone may possibly provide more information, the Advisory Ruling is a temporary solution until then.

Board Member Krupa agreed that the all of the words of the section of the Board's regulation do not have to be added to the language of the proposed Advisory Ruling. This is so because the Board is not changing the regulation.

Mr. Coyne felt that the proposed language should be amended to add the wording "quality video or" to modify that part of the proposed Advisory Ruling containing the words "review of digital images." He pointed out that the Board is here to protect the public.

The proposed Advisory Ruling was so amended which then read:

The Auto Damage Appraiser Licensing Board has passed a motion agreeing that an appraisal conducted by a licensed appraiser via review of **quality video or** digital images with documentation meets the requirements of 212 CMR 2.04(1)(d) "The appraiser shall personally inspect the damaged motor vehicle and shall rely primarily on that personal inspection in making that appraisal...."

Board Member Garcia read the proposed Advisory Ruling as amended. Chairman Cox called for a motion to adopt the Advisory Ruling. A motion was made by Board Member Krupa and seconded by Board Member Garcia. The Board adopted the Advisory Ruling by a vote of: 4-0.

Chairman Cox said that he would have liked to have heard from absent Board Member McClements as to what his suggestion was about defining the terms "estimates" and "appraisals" but would have to wait until the next Board Meeting.

Board Member Garcia replied that in his opinion an estimate is an appraisal and the Board may need to change the regulation.

Date for Next Meeting:

The Board Members agreed to set the date of the next meeting for June 11, 2014 at 9:30AM. Chairman Cox said that at the next Board Meeting added to the agenda are the following two items:

1. The discussion of the terms "estimate" and "appraisal."
2. Discussion of changing the Board's regulation from requiring an appraisal of a motor vehicle when the damage exceeds \$1,500 to damage in excess of \$4,000.

Mr. Joseph Cura was allowed to address the Board about changing the curriculum for a course he teaches to applicants studying for the examination for a motor vehicle damage appraiser license.

Board Member Coyne informed the Board and members of the public attending the meeting, that he had a business relationship with Mr. Cura and said he would recuse himself.

Mr. Cura submitted his changes to his curriculum to the Board.

Mr. Garcia made a motion to accept the changes to the curriculum. The motion was seconded by Board Member Krupa. The vote was passed by a vote of 3-0, Board Member Coyne having recused himself.

Chairman Cox announced that he would entertain a Roll-call vote to enter the executive session to discuss the reputation and character of applicants for motor vehicle damage appraiser license and complaints filed against licensed motor vehicle damage appraisers. The motion was made by Board Member Garcia to enter the executive session and seconded by Board Member Krupa, the vote passed: 4-0.

Previous to entering the executive session, Legal Counsel Michael D. Powers, informed the Board and public that Complaint #2014-1 was filed against a licensed appraiser employed by Board Member Joseph Coyne's company, and when it was brought to Mr. Coyne's attention he had informed Mr. Powers he would be recusing himself from partaking in any discussion or vote on the matter.

Executive Session:

There was an applicant who indicated that he had a criminal conviction on his record and spoke with the Board. After the applicant answered several questions about his conviction and his background the Board was satisfied with the applicant's response to the questions and approved him to take the Part II examination.

After the conclusion of the discussion, Chairman Cox called for a vote on the motion. Mr. Garcia moved that the applicant be allowed to take the Part II examination. The motion was seconded by Mr. Krupa and voted: 4-0.

There was another applicant who indicated that he had a criminal conviction on his record and spoke with the Board. After the applicant answered several questions about his conviction and his background the Board was satisfied with the applicant's response to the questions and approved him to take the Part II examination.

After the conclusion of the discussion, Chairman Cox called for a vote on the motion. Mr. Garcia moved that the applicant be allowed to take the Part II examination. The motion was seconded by Mr. Krupa and voted: 4-0.

There were four complaints filed against licensed appraisers:

- a) Complaint #2014-1;
- b) Complaint #2014-2;
- c) Complaint #2014-3;

d) Complaint #2014-4.

Complaint #2014-1.

Mr. Coyne announced that the first complaint, #2014-1, was against a licensed motor vehicle damage appraiser who worked for his company and he was recusing himself from any deliberations.

Mr. Garcia reviewed the complaint and said that there was insufficient documentation submitted with it that would substantiate that the licensed appraiser did something wrong. Because the licensed appraiser had indicated in his report that there was pre-existing damage to the rear-end of complainant's motor vehicle, the point of impact of the new damage, Mr. Garcia felt that the licensed appraiser could be justified in not providing an appraisal as to additional damage to that area of the motor vehicle.

Board Member Garcia made a motion to dismiss the complaint, without prejudice, the motion was seconded by Board Member Krupa. The motion passed by a vote of: 3-0, with Mr. Coyne having recused himself.

Complaint #2014-2.

The Complaint was filed against an insurance company's licensed appraiser by an auto body company alleging a violation of 212 CMR 2.04(e) Determination of Damage and Cost of Repairs.

According to the complaint, the auto body shop's appraiser was dissatisfied with the amount of money that had been offered by the insurance company for payment of the hourly rate for applying paint and materials to the motor vehicle.

Board Member Garcia felt that the documentation that was submitted with the complaint was insufficient to make a determination that the licensed appraiser who negotiated the rate for the insurance company violated the Board's regulation.

Board Member Coyne said that the hourly rate paid by insurance companies for the cost of working with paint and materials, for repairing damaged motor vehicles, is a hot topic in the auto body industry. Mr. Coyne felt that the complaint lacked sufficient information to proceed with any action against the licensed appraiser.

Board Member Garcia moved to dismiss the complaint without prejudice, the motion was seconded by Board Member Krupa. Chairman Cox called for a vote, the vote passed by a vote of: 4-0.

Complaint #2014-3.

Board Member Krupa criticized the form of the complaint and directed the Board's attention to the fact the complaint consists of a one page document, containing one paragraph, and did not identify a licensed appraiser. He concluded that the complaint lacked sufficient information to support a violation of the Board's regulation.

Mr. Krupa moved that the Board dismiss the complaint, and Board Member Garcia seconded the motion. The motion passed by a vote of: 4-0.

Complaint #2014-4.

Board Member Garcia said that this matter, which is well documented with supporting back-up material, should be held until the next meeting to give Board Member McClements an opportunity to review it.

Board Member Krupa advised that, although the complaint is well documented the issue to be determined by the Board is whether the appraiser, who has been complained against in this matter, did anything wrong.

Board Member Coyne noted, after a review of the complaint it appears that the appraiser did in fact enter into negotiations with the complainant.

Chairman Cox felt that because of the detailed documentation that was filed with this complaint, it would be better to hold the matter until the next Board meeting to allow Mr. McClements the opportunity to review it and express his opinion on the matter.

After a discussion among the Board Members it was decided to place the complaint on the agenda for the next Board meeting.

Adjournment:

Chairman Cox called for a motion to adjourn the meeting. Board Member Coyne moved to adjourn the meeting, a second was provided by Mr. Garcia and the motion carried by a vote of: 4-0. Whereupon, the Board's business was concluded.

The form of these minutes comport with the requirements of M.G.L. c. 30A, §22(a).